REMARKS

Claims 1-80 are pending in the application with claims 1-23 and 56-80 withdrawn from consideration. Claims 24-55 stand rejected. Claim 48 has been amended to spell out the meaning of "BMA" as bone marrow aspirate. Applicants would also like to thank Examiner Lankford for his help during the office interview held on April 28, 2004. Applicants have incorporated the comments of that discussion in the response below.

Applicants traverse the rejection of claims 24-55 as allegedly being indefinite under 35 U.S.C. §112, second paragraph. The Office Action argues that "'infiltrant' renders the claims indefinite because it is unclear what can be encompassed by the term." (Office Action at page 2). However, paragraphs 28 and 34, for example, describe the "infiltrants" useful in some embodiments of the present invention. It should be understood that those skilled in the art using the methods defined by the present claims would likely add beneficial substances to the infiltrants of the present invention to achieve their own particular objectives. For example, as explained in paragraph 28, medicaments, and therapeutic materials including growth factors or growth hormones that elicit bone formation and reparation, may comprise the infiltrants of the claimed methods. Indeed, claims 31 and 32 define embodiments where the substance that has infiltrated the biocompatible material comprises bone marrow aspirate and replicated bone marrow. Therefore, applicants respectfully request that this rejection be withdrawn.

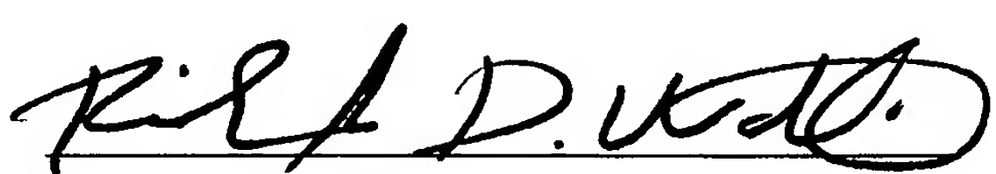
The Office Action has also rejected claim 48 because the term "BMA" allegedly has no antecedent basis. Applicants disagree. Claim 48 recites the step wherein bone marrow is aspirated "from an animal using said aspirating means." One skilled in the art would know that what is obtained from aspirating bone marrow from an animal may be called bone marrow aspirate. Therefore, BMA, or bone marrow aspirate, has antecedent basis within claim 48. However, Applicants have amended claim 48 to clarify that "BMA" stands for bone marrow aspirate. Therefore, this rejection is considered moot and should be withdrawn.

Claims 24-55 stand rejected under 35 U.S.C. §103(a) as allegedly being unpatentable over U.S. Patent No. 5,824,084 to Muschler ("Muschler"). The Office Action argues that the embodiments in Muschler that do not require an anti-coagulant would inherently contain some coagulation and would, therefore, read on the present claims. (Office Action at page 4).

However, Muschler does not discuss embodiments where no anti-coagulant is used. As the Office Action notes several times, Muschler explicitly states that an anti-coagulant is preferred. Muschler goes on to point out that the bone marrow aspirate flows through the porous member and into an effluent container. (Column 5, lines 7-11) Coagulation retards this flow and, therefore, goes against the teaching of Muschler. Although the Office Action argues that Muschler does not teach that an anti-coagulant is required, the Office Action has not pointed to any motivating factor for one skilled in the art to go against the preferred teaching of this reference. If proposed modification would render the prior art invention being modified unsatisfactory for its intended purpose, then there is no suggestion or motivation to make the proposed modification. *In re Gordon,* 733 F.2d 900, 221 USPQ 1125 (Fed. Cir. 1984). Therefore, Applicants respectfully request that this rejection be reconsidered and withdrawn.

Applicants believe that the foregoing constitutes a complete and full response to the Office Action of record. Applicants respectfully submit that this application is now in condition for allowance. Accordingly, an indication of allowability and an early Notice of Allowance are respectfully requested.

Date: April 29, 2004



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